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 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,	)	Criminal Case No.08cr1728 IEG
	)	
11 Plaintiff,	)	DATE: September 15, 2008
	)	TIME: 2:00 p.m.
12 v.	)	
	)	GOVERNMENT'S RESPONSE IN
13 JESUS MANUEL PEREZ,	)	OPPOSITION TO DEFENDANT'S
	)	MOTION TO SUPPRESS STATEMENTS
14 Defendant.	)	Together with Statement of
	)	Facts, Memorandum of Points
15	)	and Authorities, and the
	)	United States' Notice of
16	)	404(b)evidence

17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and  
 18 through its counsel, Karen P. Hewitt, United States Attorney, and  
 19 Anne Kristina Perry, Assistant United States Attorney, and hereby  
 20 files its response and opposition to Defendant's above-referenced  
 21 motions. Said response is based upon the files and records of  
 22 this case, together with the attached memorandum of points and  
 23 authorities.

24 I

25 **STATEMENT OF FACTS**

26 On December 15, 2006, a blue Plymouth Voyager entered the  
 27 Calexico, West, Port of Entry. The van was driven by the  
 28 defendant, JESUS MANUEL PEREZ. He told Customs and Border

1 Protection Officer J. Martinez that he was a U.S. citizen, and  
2 that he was going to work. However, Martinez noticed that PEREZ's  
3 hands were shaky, and PEREZ was unable to tell him the name of the  
4 work place. MARTINEZ referred the vehicle to secondary  
5 inspection, where the vehicle was screened by a Narcotics Detector  
6 Dog. The dog, "Senna," alerted to the back seat near the driver's  
7 side panel. A total of 42.80 of what was later determined to be  
8 marijuana was recovered from the vehicle (Exhibit 1)

9 ICE agents Henderson and Cervantes conducted an interview of  
10 PEREZ. Prior to any questioning, Agent Cervantes advised PEREZ of  
11 his constitutional rights, using a printed form, attached hereto  
12 as Exhibit 2. PEREZ relinquished his rights and spoke to the  
13 agents. He advised that he was crossing drugs for someone named  
14 Cesar (Exhibit 3). Eventually, he pled guilty to a charge of  
15 Importation of Controlled Substance, in Case No. 07cr0099 BEN  
16 (Exhibit 4, 5). Records in this courthouse demonstrate that PEREZ  
17 was sentenced to a term of 18 months' custody and was to serve  
18 three years' supervised release (Exhibit 6).

19 On May 14, 2008, at about 10:20 in the morning, JESUS MANUEL  
20 PEREZ entered the Calexico West Port of Entry, driving a brown  
21 Chrysler Sebring. He was not alone on this occasion; he was  
22 accompanied by passenger Jose Gonzales-Perales. PEREZ stated that  
23 he had nothing to declare, but the vehicle was referred to  
24 secondary as a hit from an automated targeting system. Customs  
25 and Border Protection Officer Stensgard noticed that PEREZ started  
26 to get nervous when he learned he was being referred to secondary.  
27

1 At secondary inspection, Customs and Border Protection  
2 Officer Garcia questioned PEREZ about the ownership of the  
3 vehicle, and his destination. PEREZ stated that he was heading to  
4 Calexico to go shopping and that he owned the vehicle. Narcotics  
5 Detector Dog Astrix alerted to the back seat of the vehicle.  
6 There were twenty packages of white substance in a specially built  
7 compartment in the back of the car. The substance field-tested  
8 positive for cocaine.

9 ICE agents Dotson and Gates responded to the port of entry.  
10 They conducted an interview of the defendant, a DVD of which will  
11 be provided to the Court (and has been provided in discovery) as  
12 Exhibit 8. The Advice of Rights form provided to PEREZ on this  
13 occasion was identical to the one he received in 2006, as can be  
14 seen from Exhibit 7 (translated by a court-certified interpreter).  
15 The defendant was told that he had brought cocaine into the United  
16 States, and there is a noticeable change in his demeanor (later  
17 explained by his explanation that he thought he was crossing  
18 marijuana). After he agreed to talk to the agents, PEREZ advised  
19 that he had been hired by a man named Carlos to cross marijuana.  
20 Carlos had an associate named Cesar.

## 21 II

### 22 ARGUMENT

#### 23 **THE MOTION TO SUPPRESS STATEMENTS SHOULD BE DENIED**

##### 24 A. Standards Governing Admissibility of Statements

25 A statement made in response to custodial interrogation is  
26 admissible under Miranda v. Arizona, 384 U.S. 437 (1966) and 18  
27

1 U.S.C § 3501 if a preponderance of the evidence indicates that the  
2 statement was made after an advisement of rights, and was not  
3 elicited by improper coercion. Colorado v. Connelly, 479 U.S.  
4 157, 167-70 (1986) (preponderance of evidence standard governs  
5 voluntariness and Miranda determinations; valid waiver of Miranda  
6 rights should be found in the "absence of police overreaching";  
7 "coercive police activity is a necessary predicate to the finding  
8 that a confession is not 'voluntary'"). Although the totality of  
9 circumstances, including characteristics of the defendant and  
10 details of the interview, should be considered, improper coercive  
11 activity is a necessary predicate to suppression of any statement.  
12 Id.; cf. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)  
13 ("Some of the factors taken into account have included the youth  
14 of the accused, his lack of education, or his low intelligence;  
15 the lack of any advice to the accused of his constitutional  
16 rights; the length of detention; the repeated and prolonged nature  
17 of the questioning; and the use of physical punishment such as  
18 deprivation of food or sleep.) (citation omitted). Although it is  
19 possible for a defendant to be in such a poor mental or physical  
20 condition that they cannot rationally waive their rights (and  
21 misconduct can be inferred based on police knowledge of such  
22 condition, Connelly, 479 U.S. at 167-68), the condition must be so  
23 severe that the defendant was rendered utterly incapable of  
24 rational choice. United States v. Kelley, 953 F.2d 562, 564 (9<sup>th</sup>  
25 Cir.1992) (collecting cases rejecting claims of physical/mental  
26  
27  
28

1 impairment as insufficient to prevent exercise of rational  
2 choice).

3 B. Rules Governing Grant or Denial of Evidentiary Hearing.

4 Under the Ninth Circuit and Southern District precedent, as  
5 well as Rule 47.1 of the Local Rules for the United States  
6 District Court for the Southern District of California, a  
7 Defendant is entitled to an evidentiary hearing on a motion to  
8 suppress only when the defendant adduces specific facts sufficient  
9 to require the granting of Defendant's motion. United States v.  
10 Batiste, 868 F.2d 1089, 1093 (9<sup>th</sup> Cir. 1989) (where "defendant, in  
11 his motion to suppress, failed to dispute any material fact in the  
12 government's proffer, ... the district court was not required to  
13 hold an evidentiary hearing"); United States v. Moran-Garcia, 783  
14 F.Supp. 1266, 1274 (S.D. Cal. 1991) (boilerplate motion containing  
15 indefinite and unsworn allegations was insufficient to require  
16 evidentiary hearing on defendant's motion to suppress statements);  
17 Crim. L.R. 47.1.

18 Requiring a declaration from a defendant in no way  
19 compromises Defendant's constitutional rights, as declarations in  
20 support of a motion to suppress cannot be used by the government  
21 at trial over a defendant's objections. Batiste, 868 F.2d at 1092  
22 (proper to require declaration in support of Fourth Amendment  
23 motion to suppress); Moran-Garcia, 783 F.Supp at 1271-74  
24 (extending Batiste to Fifth Amendment motion to suppress).

25 Nor is it reasonable to object that a Defendant will have  
26 less information that the government, and so should not be  
27

1 required to provide proof to support a motion. Batiste, 868 F.2d  
2 at 1092. At least in the context of motions to suppress  
3 statements, which require police misconduct incurred by Defendant  
4 while in custody, Defendant should be able to provide the facts  
5 supporting the claim of misconduct.

6 The objection that 18 U.S.C. § 3501 requires an evidentiary  
7 hearing in every case is of no merit. Section 3501 requires only  
8 that the Court make a pretrial determination of voluntariness "out  
9 of the presence of the jury." Nothing in section 3501 betrays any  
10 Congressional intent to alter the longstanding rule vesting the  
11 form of proof on matters for the court in the discretion of the  
12 court. Batiste, 868 F.2d at 1092 ("Whether an evidentiary hearing  
13 is appropriate rests in the reasoned discretion of the district  
14 court.") (citation and quotation marks omitted).

15 C. There is Adequate Proof to Support a Rejection of a  
16 Motion to Suppress

17 The Ninth Circuit has expressly stated that a government  
18 proffer based on the statement of facts attached to the complaint  
19 is alone adequate to defeat a motion to suppress where the defense  
20 fails to adduce specific and material facts. Batiste, 868 F.2d at  
21 1092. As the Defendant in this case has failed to provide  
22 declarations alleging specific and material facts, the Court would  
23 be within its discretion to deny Defendant's motion based solely  
24 on the statement of facts attached to the complaint in this case,  
25 without any further showing by the Government.

26 The defendant has claimed in his pleadings that the advice of  
27 rights he received was confusing and he was and he received  
28

1 implicit promises of leniency. A review of the DVD in this case  
2 demonstrates that this did not happen. Although much of the  
3 questioning of the defendant took place in Spanish, there was also  
4 much on-the-scene translating going on.

5 When the defendant was being advised of his rights, the  
6 agents had him read each right, asked him if he understood the  
7 right, and then place his initials by each right. Again, it must  
8 be noted that this was the identical form that the defendant had  
9 received in his previous arrest. Agent Dotson did say that if the  
10 defendant wanted to have his side of the story included in the  
11 report, he would have to sign the sheet because the agents  
12 couldn't talk to him. While this was inartfully phrased,  
13 certainly it was true. PEREZ was then told to read the part of  
14 the form dealing with the renunciation of rights.

15 PEREZ has argued that there was a confusion in the  
16 administration of rights, similar to that in United States v. San  
17 Juan Cruz, 314 F.3d 384 (9<sup>th</sup> Cir. 2002). However, as can be seen  
18 in the DVD, PEREZ was paying attention to what the agents said,  
19 and when he had a question, he asked. He asked for clarification  
20 from the officer doing interpretation. He specifically asked if  
21 he would lose his rights by speaking to the officers. On the  
22 video, one of the agents specifically told him that he always had  
23 his rights and could reassert them at any time. It was only at  
24 that point that the officers began questioning PEREZ about the  
25 offense. It is readily apparent from the video that there were no  
26 coercive tactics employed in the questioning.

1           The Ninth Circuit recently described the parameters of a  
2 valid waiver of rights in United States v. Crews, 502 F.3d 1130,  
3 1139-40 (9th Cir. 2007):

4           There is a presumption against waiver, of which the  
5 Government bears the burden of overcoming by a  
6 preponderance of the evidence. United States v.  
7 Garibay, 143 F.3d 534, 536 (9<sup>th</sup> Cir. 1998). To meet this  
8 burden, generally, the Government must prove that, under  
9 the totality of the circumstances, the defendant was  
10 aware of the nature of the right being abandoned and the  
11 consequences of such abandonment. Id. Several factors to  
12 consider are (i) the defendant's mental capacity; (ii)  
whether the defendant signed a written waiver; (iii)  
whether the defendant was advised in his native tongue  
or had a translator; (iv) whether the defendant appeared  
to understand his rights; (v) whether the defendant's  
rights were individually and repeatedly explained to  
him; and (vi) whether the defendant had prior experience  
with the criminal justice system. Id. at 537-39.

13           Following these criteria, the Government has shown that the  
14 defendant's statement was voluntary. His mental capacity, as seen  
15 from the video, was adequate. He did sign a written waiver, and  
16 was advised of his rights in his native tongue and had an  
17 interpreter present. The defendant had a question about his  
18 rights, and he asked about them. His rights were explained  
19 individually. Finally, and significantly, this defendant had had  
20 those identical rights provided to him less than two years prior.  
21 The totality of circumstances of this case shows, by more than a  
22 preponderance of the evidence, that PEREZ validly waived his  
23 rights and spoke voluntarily to the agents.

### 24                           III.

#### 25                           NOTICE OF 404(B) EVIDENCE

26           The United States hereby gives notice that it intends to seek  
27 admission of the defendant's December 15, 2006 conduct as evidence



1 of "other acts" in accordance with Rule 404(b) of the Federal  
2 Rules of Evidence.

3 **III.**

4 **CONCLUSION**

5 For the foregoing reasons, the Government requests that  
6 defendant's motion to suppress statements be denied. The motion  
7 concerning 404(b) evidence will be more fully explored in Motions  
8 in Limine.

9 DATED: August 25, 2008

10 Respectfully submitted,

11 KAREN P. HEWITT  
12 UNITED STATES ATTORNEY

13 /s/ Anne Perry  
14 ANNE KRISTINA PERRY  
15 ASSISTANT U.S. ATTORNEY  
16 anne.perry2@usdoj.gov  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE MANUEL PEREZ,

Defendant.

Case No. 08cr1728 IEG

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Anne Kristina Perry, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the Government's Response in Opposition to the Defendant's Motion to suppress statements, and the Notice of 404(b) Evidence, upon Elizabeth Barros, Federal Defenders of San Diego, Inc., by filing with the Clerk of the District Court using its ECF System, which electronically notifies her.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 2008

s/Anne Perry

ANNE KRISTINA PERRY

Assistant U.S. Attorney

Anne.Perry2@usdoj.gov

# Exhibit 1



**CUSTOMS AND BORDER PROTECTION  
FIELD OPERATIONS SAN DIEGO  
INCIDENT REPORT**

NARRATIVE CONTINUATION ☐ REPORT OF OTHER OFFICER INVOLVED IN INCIDENT ☒  
 REPORTING OFFICER NAME/TITLE/AGENCY: Martinez, J./CBPO/CBP  
 SUBJECTS NAME: Jesus M. Perez DOB: 07051979  
 PORT OF ENTRY: 2503 SEIZURE NO: 2007-2503-000149-01 DATE: 12/15/2006  
 TOPIC: 42.80 kgs Marijuana  
 IOIL NO. (IF ANY) - - -

(Write in first person: identify observations, statements and behavior: contraband concealment: other pertinent facts.)

On December 15, 2006 at approximately 0252 HRS. while assigned to primary vehicle lane 10, a blue plymouth voyager minivan plate # BAMX/BAX3858 approached my booth to gain entry into the United States. The driver, Jesus M. Perez, claimed U.S. Citizen, when handing me a U.S. Passport I observed his hands were shaky. I questioned him where he was going and replied to work, but could not tell me the name of his work place. I observed K9 CBPO Price conducting a pre-primary and requested him to utilize his NDD Senna CD-07. He instructed me to refer vehicle for more intensive exam, After receiving a negative customs declaration I decided on referring vehicle for a futher inspection. I later learned that the subject had 42.80 kgs of a substance that field tested positive for Marijuana hidden whihin the van.

Jesus M. Martinez #6982  
 REPORTING OFFICER/BADGE NO:

REVIEWING SENIOR/BADGE NO:

C. Price #6846  
 APPROVING SUPERVISOR/BADGE NO:

## Exhibit 2



## U.S. Immigration and Customs Enforcement

### DECLARACIÓN DE DERECHOS

Antes de que le hagamos cualquier pregunta, Ud. debe conocer sus derechos.

Ud. tiene derecho a permanecer callado(a).

Cualquier cosa que Ud. diga puede usarse en su contra en un tribunal o en cualquier otro procedimiento.

Ud. tiene derecho a consultar un abogado antes de que Ud. haga cualquier declaración o conteste cualquier pregunta.

Ud. tiene derecho a tener un abogado presente con Ud. durante el interrogatorio.

Si no puede pagar un abogado, se le proporcionará uno antes de que le hagamos cualquier pregunta, si Ud. lo desea.

Si decide responder a nuestras preguntas ahora, Ud. aún retiene el derecho de detener el interrogatorio en cualquier momento, o de detener el interrogatorio para el propósito de consultar con un abogado.

---

### RENUNCIA A LOS DERECHOS

Me han leído y explicado esta declaración de mis derechos y entiendo completamente estos derechos. Renuncio a ellos libre y voluntariamente, sin ser amenazado(a) ni intimidado(a), y sin promesa de compensación o inmunidad. Fui detenido(a) a la(s) 0255 (hora), en el 12/15/06 (fecha), y he firmado este documento a la(s) 0745 (hora), en el 12/15/06 (fecha).

JESUS PEREZ  
Nombre

JESUS PEREZ  
Firma

Testigo:

[Signature]  
[Signature]

Fecha: 12/15/06

Testigo:

Fecha: 12/15/06

# Exhibit 3

O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY  
ICE

PAGE 3

CASE NUMBER CA13ME07CA0143

R E P O R T O F I N V E S T I G A T I O N  
C O N T I N U A T I O N

REPORT NUMBER: 001

miranda in Spanish with S/A Henderson present. PEREZ orally waived his rights, as well as signing the written waiver of rights, agreeing to make a statement.

PEREZ stated that he imagined "drugs" were in the van. PEREZ said that he was to drive the van to Arco in Calexico. PEREZ said that he was to be paid \$1500.00 to drive the controlled substance laden vehicle to Calexico.

PEREZ stated that a Hispanic male that he knew as CESAR had hired him. CESAR was about 32 years old, 5'10", muscular, bald, black eyed with a mustache. CESAR had a tattoo of three dots in the web of his right hand. This tattoo was between the thumb and forefinger. PEREZ said that CESAR spoke English and Spanish.

PEREZ said that he saw CESAR with another male that he could not describe. CESAR was passenger in a dark blue Chevrolet four (4) door "Silverado" pick-up. The pick-up had dark tinted windows, oversized rims and was possibly a 2006 or newer.

CESAR asked PEREZ for the name of a female for the van registration. PEREZ gave CESAR the name of his girlfriend Johana Cecilia Martinez-Ortega. CESAR returned later the same day with the registration in the name of Martinez.

ICE Agents arrested PEREZ for violations of 21 USC 952 and 960, Importation of Marijuana. PEREZ was booked into the Imperial County Jail, El Centro, California, pending an appearance in U.S. Magistrate Court.

## VEHICLE AND SUSPECT DATA:

## DEFENDANT:

Name: PEREZ, Jesus Manuel  
AKA: none  
DOB: 07/05/1979  
POB: San Bernardino, California  
Phone #: 011526865649814  
Address: 1298 Rio Presidio y Jose Maria Agullo  
Mexicali, Mexico

## CRIMINAL RECORD:

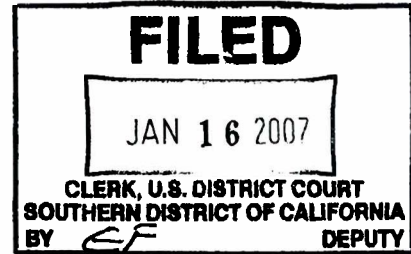
Queries of TECS and the National Crime Information Center (NCIC) regarding Jesus Manuel PEREZ (DOB: 07/05/79) were positive with

O F F I C I A L U S E O N L Y

THIS DOCUMENT IS LOANED TO YOU FOR OFFICIAL USE ONLY AND REMAINS THE PROPERTY OF THE DEPARTMENT OF HOMELAND SECURITY, ICE. ANY FURTHER REQUEST FOR DISCLOSURE OF THIS DOCUMENT OR INFORMATION CONTAINED HEREIN SHOULD BE REFERRED TO ICE HEADQUARTERS TOGETHER WITH A COPY OF THE DOCUMENT.



## Exhibit 4



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

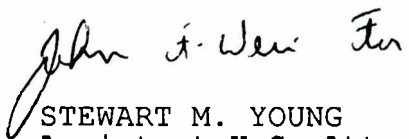
UNITED STATES OF AMERICA, ) Criminal Case No. 07CR0099-BEN  
 )  
Plaintiff, ) I N F O R M A T I O N  
 )  
v. ) Title 21, U.S.C., Secs. 952  
 ) and 960 - Importation of  
JESUS MANUEL PEREZ, ) Marijuana (Felony)  
 )  
Defendant. )

The United States Attorney charges:

On or about December 15, 2006, within the Southern District of California, defendant JESUS MANUEL PEREZ, did knowingly and intentionally import approximately 42.80 kilograms (approximately 94.16 pounds) of marijuana, a Schedule I Controlled Substance, into the United States from a place outside thereof; in violation of Title 21, United States Code, Sections 952 and 960.

DATED: January 16, 2007.

CAROL C. LAM  
United States Attorney

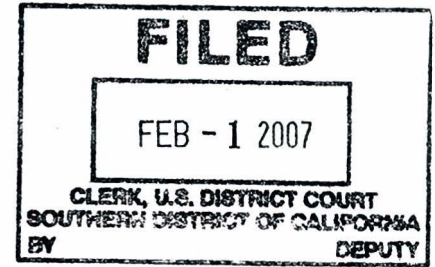
  
STEWART M. YOUNG  
Assistant U.S. Attorney

WAH:psd:Imperial  
1/12/07

# Exhibit 5

CAROL C. LAM  
United States Attorney  
WILLIAM A. HALL JR.  
Assistant U.S. Attorney  
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Attorneys for Plaintiff  
United States of America



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Criminal Case No. 07CR0099BEN  
 )  
Plaintiff, )  
 )  
v. ) PLEA AGREEMENT  
 ) (Fast-Track)  
JESUS MANUEL PEREZ, )  
 )  
 )  
Defendant. )  
 )  
 )

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, Carol C. Lam, United States Attorney, and William A. Hall Jr. and Stewart M. Young, Assistant United States Attorneys, and defendant, JESUS MANUEL PEREZ, with the advice and consent of William W. Brown, counsel for defendant, as follows:

//  
//  
//  
//  
//  
//

Def. Initials J.P.

I

THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging defendant with:

knowingly and intentionally importing approximately 42.80 kilograms/94.16 pounds (gross weight) of marijuana, a Schedule I Controlled Substance, into the United States from a place outside thereof, on or about December 15, 2006, within the Southern District of California, in violation of 21 U.S.C. §§ 952 and 960.

B. Reduction For Packaging. As a concession to and at the request of defendant, and because it will affect the sentencing recommendations (Base Offense Level) in Section X of this agreement, the Government agrees to reduce the amount of the gross weight of the marijuana by 10% to account for the weight of the packaging materials. The resulting net weight of the marijuana will be used throughout this agreement.

C. Early Disposition (Fast-Track) Program. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Southern District of California.

D. Program Requirements. As part of this plea agreement, and as set forth in Section X.A.5. below, the United States will move the Court to depart downward two offense levels under USSG § 5K3.1 provided defendant complies with the following early disposition (Fast-Track) program requirements, to which defendant specifically agrees: (1) waives indictment, (2) files or argues no substantive motions, including those described in Fed. R. Crim. P. 12, (3) pleads guilty within 60 days of arraignment on the complaint initially filed

1 against defendant ("arraignment"), (4) if defendant is illegally in  
2 the United States, stipulates to removal after completion of the  
3 sentence, and (5) waives appeal and collateral attack of the  
4 conviction and sentence (see Section XI below).

5 E. Timeliness/Offer Revocation. The disposition contemplated  
6 by this agreement is conditioned on (1) the original plea agreement  
7 being signed by defendant and defense counsel and returned to  
8 Government counsel not later than five business days before the  
9 disposition date, and (2) the guilty plea being entered on or before  
10 **February 16, 2007**. Further, in the event that defendant seeks a delay  
11 in the disposition in this case to a date beyond 60 days of  
12 arraignment, the United States may in its sole discretion revoke the  
13 disposition offer contained in this plea agreement and seek  
14 defendant's indictment on the underlying charge(s).

15 II

16 **NATURE OF THE OFFENSE**

17 A. ELEMENTS EXPLAINED

18 Defendant understands that the offense to which defendant is  
19 pleading guilty has the following elements:

- 20 1. Defendant intentionally brought marijuana into the  
21 United States; and  
22 2. Defendant knew that it was marijuana or some other  
prohibited drug.

23 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

4 Defendant has fully discussed the facts of this case with defense  
5 counsel. Defendant has committed each of the elements of the crime,  
6 and admits that there is a factual basis for this guilty plea. The  
7 following facts are true and undisputed:

8

Def. Initials J.P.  
\_\_\_\_CR\_\_\_\_



- 1 E. present evidence and to have witnesses testify on behalf of  
2 defendant; and  
3 F. not testify or have any adverse inferences drawn from the  
4 failure to testify.

5 V

6 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE  
7 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

8 The Government represents that any information establishing the  
9 factual innocence of defendant known to the undersigned prosecutor in  
10 this case has been turned over to defendant. The Government will  
11 continue to provide such information establishing the factual  
12 innocence of defendant.

13 Defendant understands that if this case proceeded to trial, the  
14 Government would be required to provide impeachment information  
15 relating to any informants or other witnesses. In addition, if  
16 defendant raised an affirmative defense, the Government would be  
17 required to provide information in its possession that supports such  
18 a defense. Defendant acknowledges, however, that by pleading guilty  
19 defendant will not be provided this information, if any, and  
20 Defendant also waives the right to this information. Finally,  
21 defendant agrees not to attempt to withdraw the guilty plea or to file  
22 a collateral attack based on the existence of this information.

23 VI

24 **DEFENDANT'S REPRESENTATION THAT GUILTY  
25 PLEA IS KNOWING AND VOLUNTARY**

26 Defendant represents that:

- 27 A. Defendant has had a full opportunity to discuss all the  
28 facts and circumstances of this case with defense counsel,  
and has a clear understanding of the charges and the  
consequences of this plea;

Def. Initials J.P.  
\_\_\_\_CR\_\_\_\_



- 1 B. No one has made any promises or offered any rewards in  
2 return for this guilty plea, other than those contained in  
3 this agreement or otherwise disclosed to the court;  
4 C. No one has threatened defendant or defendant's family to  
5 induce this guilty plea; and  
6 D. Defendant is pleading guilty because in truth and in fact  
7 defendant is guilty and for no other reason.

8 **VII**

9 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 This plea agreement is limited to the United States Attorney's  
12 Office for the Southern District of California, and cannot bind any  
13 other federal, state or local prosecuting, administrative, or  
14 regulatory authorities, although the Government will bring this plea  
15 agreement to the attention of other authorities if requested by the  
16 defendant.

17 **VIII**

18 **APPLICABILITY OF SENTENCING GUIDELINES**

19 Defendant understands the sentence imposed will be based on the  
20 factors set forth in 18 U.S.C. § 3553(a). Defendant understands  
21 further that in imposing the sentence, the sentencing judge must  
22 consult the United States Sentencing Guidelines (Guidelines) and take  
23 them into account. Defendant has discussed the Guidelines with  
24 defense counsel and understands that the Guidelines are only advisory,  
25 not mandatory, and the court may impose a sentence more severe or less  
26 severe than otherwise applicable under the Guidelines, up to the  
27 maximum in the statute of conviction. Defendant understands further  
28 that the sentence cannot be determined until a presentence report has  
been prepared by the U.S. Probation Office and defense counsel and the  
Government have had an opportunity to review and challenge the

1 presentence report. Nothing in this plea agreement shall be construed  
 2 as limiting the Government's duty to provide complete and accurate  
 3 facts to the district court and the U.S. Probation Office.

4 **IX**

5 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

6 This plea agreement is made pursuant to Federal Rule of Criminal  
 7 Procedure 11(c)(1)(B). Defendant understands that the sentence is  
 8 within the sole discretion of the sentencing judge. The Government  
 9 has not made and will not make any representation as to what sentence  
 10 defendant will receive. Defendant understands that the sentencing  
 11 judge may impose the maximum sentence provided by statute, and is also  
 12 aware that any estimate of the probable sentence by defense counsel  
 13 is a prediction, not a promise, and is **not binding on the Court.**  
 14 Likewise, the recommendation made by the Government is not binding on  
 15 the Court, and it is uncertain at this time what defendant's sentence  
 16 will be. Defendant also has been advised and understands that if the  
 17 sentencing judge does not follow any of the parties' sentencing  
 18 recommendations, defendant nevertheless has no right to withdraw the  
 19 plea.

20 **X**

21 **PARTIES' SENTENCING RECOMMENDATIONS**

22 **A. SENTENCING GUIDELINE CALCULATIONS**

23 Although the parties understand that the Guidelines are only  
 24 advisory and just one of the factors the court will consider under  
 25 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly  
 26 recommend the following Base Offense Level, Specific Offense  
 27 Characteristics, Adjustments and Departures (if applicable):

28 //

Def. Initials J.P.  
 CR \_\_\_\_\_

1	1. Base Offense Level [§ 2D1.1]	18
2	2. Safety Valve (if applicable)	-2*
3	[§§ 2D1.1(b)(9) and 5C1.2]	
4	3. Minor Role [§ 3B1.2(b)]	-2
5	4. Acceptance of Responsibility [§ 3E1.1]	-2
6	5. Departure for Fast Track [§ 5K3.1]	<u>-2</u>
7	<b>Total Offense Level</b>	<u><b>10</b></u>

8        \*If defendant truthfully discloses to the government all  
9 information and evidence the defendant has concerning the offense and  
10 relevant conduct, and if defendant otherwise qualifies for the "safety  
11 valve" in § 5C1.2, the government will recommend a two-level reduction  
12 (in drug cases only) under § 2D1.1(b)(9), and relief from any  
13 statutory mandatory minimum sentence pursuant to § 5C1.2. Defendant  
14 understands that if he/she does not qualify for § 5C1.2, defendant may  
15 be subject to a statutory mandatory minimum sentence.

16        B.    ACCEPTANCE OF RESPONSIBILITY

17        Notwithstanding paragraph A.4 above, the Government will not  
18 recommend any adjustment for Acceptance of Responsibility if  
19 defendant:

- 20            1. Fails to admit a complete factual basis for the plea  
21                    at the time it is entered, or
- 22            2. Denies involvement in the offense, gives conflicting  
23                    statements about that involvement, or is untruthful  
24                    with the Court or probation officer, or
- 25            3. Fails to appear in court, or
- 26            4. Engages in additional criminal conduct, or
- 27            5. Attempts to withdraw the plea, or
- 28            6. Refuses to abide by any lawful court order.

//

Def. Initials J.P  
CR

1 C. ADJUSTMENTS

2 The parties agree that defendant may request additional downward  
3 adjustments and that the Government will oppose any downward  
4 adjustment not set forth in Section X, paragraph A above.

5 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

6 The parties have **no** agreement as to defendant's Criminal History  
7 Category.

8 E. DEPARTURES

9 The parties agree that defendant may request additional downward  
10 departures, including criminal history departures under USSG § 4A1.3.;  
11 however, defendant may not file or argue substantive motions,  
12 including those described in Fed. R. Crim. P. 12, under this  
13 subsection. The parties agree further that the Government will oppose  
14 any downward departure not set forth in Section X, paragraph A above.

15 F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

16 The parties agree that the facts in the "factual basis" paragraph  
17 of this agreement are true, and may be considered as "relevant  
18 conduct" under USSG § 1B1.3 and as the nature and circumstances of the  
19 offense under 18 U.S.C. § 3553(a)(1).

20 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

21 The parties agree that the Government will recommend that  
22 defendant be sentenced to the **low end** of the advisory guideline range  
23 as calculated by the Government pursuant to this agreement. However,  
24 if the Court adopts an offense level or downward adjustment or  
25 departure below the Government's recommendations in this plea  
26 agreement, the Government will recommend a sentence as near as  
27 possible to what the sentence would have been if the Government's  
28 recommendations had been followed.

H. SPECIAL ASSESSMENT

The parties will jointly recommend that defendant pay a special assessment in the amount of \$100.00 to be paid forthwith at time of sentencing. The special assessment shall be paid through the office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

## I. STIPULATED REMOVAL

If defendant is not a United States citizen or national, either before or immediately following sentencing, defendant agrees to an order of removal from the United States entered by Executive Office for Immigration Review or authorized Department of Homeland Security official. Defendant understands that defendant will not be removed until defendant has served any criminal sentence imposed in this or any other case. Defendant further waives any right to appeal, reopen or challenge the removal order.

XI

**DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, unless the Court imposes a custodial sentence greater than the high end of the guideline range (or statutory mandatory minimum term, if applicable) recommended by the Government pursuant to this agreement at the time of sentencing. If the custodial sentence is greater than the high end of that range, the defendant may appeal, but the Government will be free to support on appeal the sentence actually imposed. If defendant believes the Government's recommendation is not in accord with this agreement,

1 defendant will object at the time of sentencing; otherwise the  
2 objection will be deemed waived.

3 If defendant breaches this plea agreement, at any time, by  
4 appealing or collaterally attacking the conviction or sentence, in any  
5 way, the Government may prosecute defendant for any counts, including  
6 those with mandatory minimum sentences, dismissed or not charged  
7 pursuant to this plea agreement. Additionally, the Government may use  
8 any factual admissions made by defendant pursuant to this plea  
9 agreement in any such prosecution.

10 XII

11 **CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT**  
12 **THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE**  
**THE PLEA**

13 This plea agreement is based on the understanding that, prior to  
14 defendant's sentencing in this case, defendant has not committed or  
15 been arrested for any offense not known to the Government prior to  
16 defendant's sentencing. This plea agreement is further based on the  
17 understanding that defendant has committed no criminal conduct since  
18 defendant's arrest on the present charges, and that defendant will  
19 commit no additional criminal conduct before sentencing. If defendant  
0 has engaged in or engages in additional criminal conduct during this  
1 period, or breaches any of the terms of any agreement with the  
2 Government, the Government will not be bound by the recommendations  
3 in this plea agreement, and may recommend any lawful sentence. In  
4 addition, at its option, the Government may move to set aside the  
5 plea.

6 //

7 //

8 //



## XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

## XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

## XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

## XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

1/26/07  
DATED

1/25/07  
DATED

CAROL C. LAM  
United States Attorney

STEWART M. YOUNG  
Assistant U.S. Attorney

WILLIAM W. BROWN  
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

1/25/07  
DATED

JESUS PEREZ  
JESUS MANUEL PEREZ  
Defendant

Translated by: Danielle Leyva  
on 1/25/07

## Exhibit 6



AO 245B (Rev. 9/00) Judgment in a Criminal Case  
Sheet 1

**FILED**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

2007 MAY 18 PM 2:23

UNITED STATES OF AMERICA

v.

JESUS MANUEL PEREZ (1)

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

BY RM DEPUTY

Case Number: 07CR0099-BEN

WILLIAM WINFIELD BROWN

Defendant's Attorney

REGISTRATION NO. 00328298



THE DEFENDANT:



pleaded guilty to count(s) 1 OF THE INFORMATION.



was found guilty on count(s) \_\_\_\_\_

after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
21 USC 952, 960	IMPORTATION OF MARIJUANA (FELONY)	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.



The defendant has been found not guilty on count(s) \_\_\_\_\_



Count(s) \_\_\_\_\_

is ☐ are ☐ dismissed on the motion of the United States.

Assessment: \$100.00



Fine waived

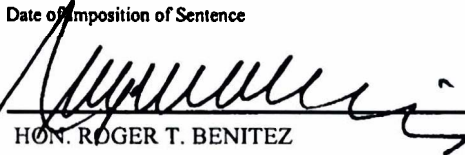


Property forfeited pursuant to order filed \_\_\_\_\_ included herein.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

MAY 14, 2007

Date of Imposition of Sentence



HON. ROGER T. BENITEZ  
UNITED STATES DISTRICT JUDGE

Entered Date:

07CR0099-BEN

AO 245B (Rev. 9/00) Judgment in Criminal Case  
Sheet 2 — Imprisonment

Judgment — Page 2 of 4

DEFENDANT: JESUS MANUEL PEREZ (I)  
CASE NUMBER: 07CR0099-BEN

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of EIGHTEEN (18) MONTHS.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_  
as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before \_\_\_\_\_  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

07CR0099-BEN

DEFENDANT: JESUS MANUEL PEREZ (1)  
CASE NUMBER: 07CR0099-BEN

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:  
THREE (3) YEARS.

### MANDATORY CONDITIONS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.  
The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

The defendant shall cooperate as directed in the collection of a DNA sample, pursuant to 18 USC 3583(d).

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

07CR0099-BEN

AO 245B (Rev. 9/00) Judgment in a Criminal Case  
Sheet 3 — Continued 2 — Supervised Release

Judgment—Page 4 of 4

DEFENDANT: JESUS MANUEL PEREZ (1)  
CASE NUMBER: 07CR0099-BEN

### SPECIAL CONDITIONS OF SUPERVISION

- ☒ Not possess any firearm, explosive device or other dangerous weapon.
- ☒ Submit to a search of person, property, residence, abode or vehicle, at a reasonable time and in a reasonable manner, by the probation officer.
- ☐ The defendant shall violate no laws, federal, state and local, minor traffic excepted.
- ☐ If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion, or voluntary departure.
- ☐ Not transport, harbor, or assist undocumented aliens.
- ☒ Not operate a motor vehicle without being properly licensed and without having financial responsibility/insurance.
- ☒ Not operate a motor vehicle with any detectable amount of alcohol in his body.
- ☒ Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.
- ☒ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- ☐ Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- ☐ Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- ☐ Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. The defendant may be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☐ Take no medication containing a controlled substance without valid medical prescription, and provide proof of prescription to the probation officer, if directed.
- ☐ Participate in a mental health treatment program as directed by the probation office.
- ☐ Provide complete disclosure of personal and business financial records to the probation officer as requested.
- ☐ Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- ☐ Seek and maintain full time employment and/or schooling or a combination of both.
- ☐ Resolve all outstanding warrants within            days.
- ☐ Complete            hours of community service in a program approved by the probation officer within
- ☐ Reside in a Community Corrections Center (CCC) as directed by the probation officer for a period of
- ☐ Reside in a Community Corrections Center (CCC) as directed by the Bureau of Prisons for a period of commencing upon release from imprisonment.
- ☐ Remain in your place of residence for a period of            , except while working at verifiable employment, attending religious services or undergoing medical treatment.
- ☐ Not engage in any form of telemarketing, as defined in 18 USC 2325, without the written permission of the probation officer.
- ☐ Comply with the conditions of the Home Confinement Program for a period of            months and remain at your residence except for activities or employment as approved by the court or probation officer. Wear an electronic monitoring device and follow procedures specified by the probation officer. Pay the total cost of electronic monitoring services, or a portion if deemed appropriate by the probation officer.
- ☒ Participate in a program of drug or alcohol abuse treatment, including urinalysis testing and counseling, as directed by the probation officer. The defendant is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

07CR0099-BEN

# Exhibit 7



## U.S. Immigration and Customs Enforcement

### DECLARACIÓN DE DERECHOS

*J.P.* Antes de que le hagamos cualquier pregunta, Ud. debe conocer sus derechos.

*J.P.* Ud. tiene derecho a permanecer callado(a).

*J.P.* Cualquier cosa que Ud. diga puede usarse en su contra en un tribunal o en cualquier otro procedimiento.

*J.P.* Ud. tiene derecho a consultar un abogado antes de que Ud. haga cualquier declaración o conteste cualquier pregunta.

*J.P.* Ud. tiene derecho a tener un abogado presente con Ud. durante el interrogatorio.

*J.P.* Si no puede pagar un abogado, se le proporcionará uno antes de que le hagamos cualquier pregunta, si Ud. lo desea.

*J.P.* Si decide responder a nuestras preguntas ahora, Ud. aún retiene el derecho de detener el interrogatorio en cualquier momento, o de detener el interrogatorio para el propósito de consultar con un abogado.

---

### RENUNCIA A LOS DERECHOS

Me han leído y explicado esta declaración de mis derechos y entiendo completamente estos derechos. Renuncio a ellos libre y voluntariamente, sin ser amenazado(a) ni intimidado(a), y sin promesa de compensación o inmunidad. Fui detenido(a) a la(s) 10:20 (hora), en el 5-14-8 (fecha), y he firmado este documento a la(s) \_\_\_\_\_ (hora), en el 5-14-8 (fecha).

JESUS PEREZ

Nombre

JESUS PEREZ

Firma

Testigo:

[Signature]  
[Signature]

Fecha: 5/14/08

Testigo:

Fecha: 011





**U.S. Immigration  
and Customs  
Enforcement**

[Translation]

STATEMENT OF RIGHTS

J.P. Before we ask you any question, you should know your rights.

J.P. You have the right to remain silent.

J.P. Anything that you say can be used against you in a court or in any other proceeding.

J.P. You have the right to consult an attorney before you make any statement or answer any question.

J.P. You have the right to have an attorney present with you during the questioning.

J.P. If you cannot pay an attorney, one will be provided for you before we ask you any question, if you so desire.

If you decide to respond to our questions now, you still retain the right to stop the questioning  
J.P. at any time, or to stop the questioning for the purpose of consulting with an attorney.

---

WAIVER OF RIGHTS

This statement of my rights has been read and explained to me and I completely understand these rights. I freely and voluntarily waive them, without being threatened or intimidated, and without promise of compensation or immunity. I was arrested at 10.20 (hours), on 5-14-8 (date), and I have signed this document at \_\_\_\_\_ (hours), on 5-14-8 (date).

Jesus PERE  
Name

Jesus PEREZ  
Signed

Witness: [Illegible rubric]

Date: 5/14/08

Witness: Rto Ctz

Date: 011